



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,012	03/22/2001	Stefan Besling	US018029	5187

7590 03/24/2004

Michael E. Schmitt
Corporate Patent Counsel
U.S. Philips Corporation
580 White Plains Road
Tarrytown, NY 10591

EXAMINER

HESS, DANIEL A

ART UNIT	PAPER NUMBER
----------	--------------

2876

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/816,012	Applicant(s) BESLING ET AL.	
	Examiner Daniel A Hess	Art Unit 2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Remarks

1. Receipt is acknowledged of applicant's response of 1/15/2004, which has been placed in the file of record, and to which this action is a response.

The examiner wishes to point out that the claims remain very broad, and significantly more detail is needed to distinguish the claims from the prior art shown. Since the claims have not been amended, and the applicant's arguments are not convincing, the rejection is maintained, and is repeated below.

A 'Response to Arguments' section below gives the examiner's response to the arguments made by the applicant on 1/15/2004.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 31-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Donnell, "How Frequent Flier Programs Work," HowStuffWorks, Inc (of record) in view of Stutz, "Your Vacation Plans for Sale?" Wired News, posted online July 9, 1998.

Art Unit: 2876

Re claims 31: See O'Donnell teaches (Background, paragraph 1; page 2, Frequent Flier Basics, paragraph 4; elsewhere throughout document). Frequent flier programs typically permit a user to gain access to a transportation system with a frequent flier card. It is the case that the frequent flier program is sometimes used to permit access, particularly when a person is using their miles. Alternatively, in the case that frequent flier number or even a driver's license is presented instead, this information merely acts as a proxy for the frequent flier card, and this information can be considered the pass. The program collects data pertaining the a plurality of users as they use their passes through the system. Statistics can mean generally 'numerical data' (The American Heritage® Dictionary of the English Language, Fourth Edition), which is certainly obtained.

O'Donnell fails to teach or suggest selling the data.

Stutz discussed a plan (page 1, 2nd paragraph) in which passenger data is collected for sale to direct marketers. As described, this same data that comprises frequent flier data (travel itineraries, passenger information). Although not explicitly stated, sale of this data would naturally subsidize the transportation system, revenue comes from a source other than ticket sales.

In view of Stutz, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known sales of travel data gathered because this can increase revenue for airlines, and benefit direct marketers who would sell to travelers.

Re claims 32-34, 36-38, 40: By definition, frequent flier programs meet these limitations.

Art Unit: 2876

Re claim 35: It has been known for years to mine data to achieve useful demographic profiling for marketing purposes. This has been done with the various data collected each decade by the US Census. The motive has been greater marketing success.

Re claim 39, 41: It is clear in Stutz (page 1, 2nd paragraph) that the direct marketers buying the data would do business in areas traveled by the fliers; otherwise what purpose would data on 'travel itineraries' serve?

Re claim 42: See claim 31. Also, regarding the limitation of 'managing the transportation system based on these statistical reports,' frequent flier programs can and are commonly used to fill airplanes. How is this done? Frequent fliers are given benefits on certain flights but not others.

Re claim 43-49: By definition, frequent flier programs meet these limitations.

Re claim 50: It is known frequent fliers programs have certain days they are not allowed to use their miles. This is a determination of the impact that the travelers would have of traffic flow, and then using the program to modify traveler's behavior, i.e. modify transportation services based on traffic flow.

Response to Arguments

3. Applicant's arguments filed 1/15/2004 have been fully considered but they are not persuasive. In particular, the applicant has argued with respect to claim 31 that the frequent flier pass is not itself a boarding pass. Nevertheless, broad interpretation of the claim is permitted, and indeed appropriate. A frequent flier pass is used to gain access to a transportation system.

Art Unit: 2876

Granted there are some step involved, in going from presenting a frequent flier card to being able to get on a plane, but this is not in conflict with the claims.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A Hess whose telephone number is (571) 272-2392. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2876

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DH

Daniel A Hess
Examiner
Art Unit 2876



MICHAEL G. LEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800